

FIREARMS LITIGATION REPORT

June 2016

Prepared By:



NRA/CRPA California and Ninth Circuit Litigation Matters

Issue	Case Name	Case Status	What's Next
Challenge to "good cause" requirement for CCWs	Peruta v. San Diego	Oral arguments took place before an 11-judge "en banc" panel of the 9th Circuit Court of Appeals in June 2015.	A decision from the court could come at any time any time.
Challenge to "good cause" requirement for CCWs filed after CA banned Unloaded Open Carry	McKay v. Hutchens	The case has been stayed pending resolution of <i>Peruta</i> .	After <i>Peruta</i> is decided, a decision will likely follow in this case.
10+ Round Magazine Possession Ban	Fyock v. Sunnyvale	In 2015, the 9th Circuit upheld the lower court's denial of plaintiffs' request for an order prohibiting enforcement while the case proceeds. The case will eventually resume in the trial court, likely following resolution of <i>Peruta</i> .	The case is currently stayed pending resolution of <i>Peruta</i> .
Challenge to DOJ's excessive DROS fees that generated massive surplus.	Bauer v. Harris	In March 2015, the district court issued an opinion upholding California's use of DROS fees to fund APPS and other law enforcement activities. Plaintiffs have appealed. The case has been fully briefed and is awaiting oral arguments.	Oral arguments will likely be scheduled in the later half of 2016 or early 2017. A decision can be expected anywhere from 3-9 months following oral arguments.
Challenged DOJ's Use of DROS surplus to fund APPS	Gentry v. Harris	An amended complaint alleging that the DROS fee is an invalid property tax was filed with the district court in November 2015. The case is currently in the discovery process.	Unknown.

NRA/CRPA California and Ninth Circuit Litigation Matters (cont.)

Issue	Case Name	Case Status	What's Next
Vagueness challenge to “handgun ammunition” sales registration requirement and mail order ban	Parker v. California	The case is currently awaiting oral arguments before the California Supreme Court.	Oral arguments could be set at any time. Timeframes for decisions from the California Supreme Court can vary, but often come within a few months of oral arguments.
Challenge to CA DOJ’s underground regulations regarding the Firearm Safety Certificate Program	Belemjian v. Harris	This case forced DOJ to finally begin the process of enacting regulations for the FSC program in February 2015. Plaintiffs are currently appealing the lower court’s denial of Plaintiffs’ request for attorneys’ fees.	Plaintiffs are preparing their opening brief to the 9th Circuit. Once briefing is complete, oral arguments will likely take place in 2017.
Challenge to firearm prohibition for misdemeanor domestic violence	Baker v. Lynch	In July 2013, the district court granted then Attorney General Eric Holder's motion to dismiss the case. This decision has been appealed to the 9th Circuit Court of Appeals and briefing was completed on May 27, 2015.	Oral arguments will likely take place in late 2016 or early 2017. A decision can be expected anywhere from 3-9 months following oral arguments.
Challenge to improper denial of use permit to operate firearms retail and repair business.	Settergren v. Daly City	The case was filed on January 15, 2016. On February 18, 2016, Daly City filed an answer. The case is now in the discovery process.	Unknown.
Preemption challenge to LA ordinance banning possession of 10+ Round Magazines	Bosenko v. City of Los Angeles	This case is currently being litigated in the federal district court.	A hearing on Plaintiffs’ motion for summary judgment will take place in late 2016.

In addition to these cases, NRA and CRPA regularly provide consulting advice and prepare amicus curiae or “friend of the court” briefs in a number of other firearm related case. NRA and CRPA have recently supported or will be supporting the following cases.

California and 9th Circuit Amicus and Consulting Support

Issue	Case Name	Case Status	What’s Next
Sacramento and Yolo County CCW Issuance Policies	Richards v. Prieto	The case was reheard concurrently with <i>Peruta</i> in June 2015.	After <i>Peruta</i> is decided, a decision will likely follow in this case.
Hawaii CCW Scheme	Baker v. Kealoha	The case has been stayed pending the resolution of <i>Peruta</i> .	After <i>Peruta</i> is decided, a decision will likely follow in this case.
California Handgun Roster	Pena v. Cid	The federal district court upheld the Roster in 2015. Plaintiffs appealed, and the case has been fully briefed before the 9th Circuit.	Oral arguments will likely be scheduled in the later half of 2016 or early 2017. A decision can be expected anywhere from 3-9 months following oral arguments.
10-Day Wait as applied to current firearm owners	Silvester v. Harris	Oral arguments took place before the 9th Circuit on February 9, 2016.	A decision from the court can be expected anytime in the next 3-9 months.
1st Amendment challenge to handgun advertisement prohibition	Tracy Rifle and Pistol v. Harris	In July 2015, the district court denied a request to prohibit enforcement while the case was proceeds. That decision was appealed, and in February 2016 the 9th Circuit upheld the lower court’s order within two weeks of oral arguments.	Litigation in this case will now resume in the lower court.
FFL zoning ordinance	NSSF v. City of Pleasant Hill	Plaintiffs recently dismissed the suit and are currently seeking to recover attorneys’ fees.	Unknown.
Challenges DOJ regulation barring sale of more than one handgun in 30 days to COE holders	Doe v. Harris	The California trial court upheld DOJ’s regulation and the plaintiffs have appealed the decision to the California Court of Appeals.	The case will now be briefed before the California Court of Appeals. Oral arguments will likely take place in late 2017.

California and 9th Circuit Amicus Support (cont.)

Issue	Case Name	Case Status	What's Next
Challenge to ban on possession and carriage of firearms on recreational Army Corps' lands.	<u>Nesbitt v. U.S. Army Corps of Engineer</u>	The case has been fully briefed and is awaiting oral arguments before the 9th Circuit Court of Appeals.	Oral arguments are expected to take place in 2016. A decision can be expected anywhere from 3-9 months following oral arguments.
State Court challenge to California's microstamping requirements	<u>NSSF v. California</u>	The California trial court upheld the microstamping requirements, and the plaintiffs appealed. The case has been fully briefed before the California Court of Appeals.	Oral arguments will likely take place in late 2016 or 2017, and a decision from the appeals court will follow.

NRA and CRPA also provide assistance in a number of critical Second Amendment cases across the country that could set precedent for future challenges to California gun laws. The following are a few of the more significant examples of these cases.

National Amicus Support

Issue	Case Name	Case Status	What's Next
Challenge to Maryland's ban on "assault weapons" and 10+ round magazines	<u>Kolbe v. Hogan</u>	On February 4, 2016, the 4th Circuit overturned the district court's approval of the ban under intermediate scrutiny, and ordered the district court to apply "strict scrutiny." The State appealed and the case was reheard by the full 4th Circuit sitting "en banc" on May 11, 2016.	An audio recording of the recent "en banc" oral arguments is available at: <u>http://michellawyers.com/kolbe-v-omalley/</u> . A decision from the 4th Circuit can be expected anywhere in the next 12 months.

National Amicus Support (cont.)

Issue	Case Name	Case Status	What's Next
<p>Challenges Washington D.C.'s "good reason" requirement for the issuance of a CCW permit</p>	<p><u>Grace v. District of Columbia</u></p>	<p>On May 17, 2016, the Court granted the Plaintiffs' request for an order blocking enforcing of the "good reason" requirement. The government appealed the decision to the D.C. Circuit Court of Appeals.</p>	<p>On May 27, the D.C. Circuit issued a stay of the lower court's order that prohibited D.C. from enforcing its "good reason" requirement. The case will now be briefed and argued before the D.C. Circuit.</p>
<p>Challenges Washington D.C.'s excessive firearm registration requirements</p>	<p><u>Heller (III) v. District of Columbia</u></p>	<p>In September 2015, the D.C. Circuit issued an opinion striking down the majority of Washington D.C.'s firearm registration requirements as a violation of the Second Amendment. On October 19, 2015, D.C. filed a petition for an "en banc" rehearing of the case by a larger panel of the D.C. Circuit.</p>	<p>On February 26, 2016, the Court denied the request for "en banc" review.</p>
<p>Challenges Colorado's ban on 15+ round magazines</p>	<p><u>Colorado Outfitters v. Hickenlooper</u></p>	<p>Oral arguments took place before a 3-judge panel of the 10th Circuit Court of Appeals on September 28, 2015.</p>	<p>On March 22, 2016, the Court ruled that Plaintiffs did not have standing to bring their claims and ruled against the Plaintiffs' appeal.</p>